

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
)
Jurisdictional Separations and Referral) **CC Docket No. 80-286**
to the Federal-State Joint Board)
)

COMMENTS OF EMBARQ

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INTRODUCTION AND SUMMARY

The Commission has issued a notice of proposed rulemaking,¹ inviting comment on its proposal to extend until June 30, 2010, the current freeze of Part 36 category relationships and jurisdictional cost allocations factors.² Embarq supports the Commission’s call to extend the freeze. The Commission, however, would be wiser to extend the freeze indefinitely until such time as separations reform is completed. If the Commission believes a specific deadline is necessary, it should extend the freeze for three years or until comprehensive reform is completed, whichever comes first, as it did in 2006.³

Extending the freeze is plainly warranted. The Commission has twice before found a three- or five-year freeze to be warranted for all incumbent local exchange

¹ Notice of Proposed Rulemaking, FCC 09-24 (rel. Mar. 27, 2009) (“NPRM”). The NPRM was published in the Federal Register on April 3, 2009. 74 Fed. Reg. 15236 (Apr. 3, 2009).

² The separations requirements are codified at 47 C.F.R. §§ 36.1-36.507.

³ The freeze was last extended in May 2006. *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 at ¶¶ 1, 16 (2006) (“2006 FNPRM”).

carriers (“ILECs”), and the same reasoning applies today. The Commission recognized that maintaining the status quo would allow the Commission to complete comprehensive separations reform, reform that could even include eliminating the requirement altogether, particularly for price cap carriers. At the same time, failing to extend the freeze would be -- as the Commission recognized in 2001 and 2006 -- expensive, a waste of resources, and unduly and unreasonably burdensome to carriers. It would create uncertainty that would discourage network and broadband investment at a time when the nation most needs it.

I. THE COMMISSION SHOULD EXTEND THE FREEZE FOR THREE YEARS.

While Embarq is hopeful that the Commission will complete reform within one year, unquestionably it would be wiser to allow additional time. The Commission has many issues on its agenda over the next year, including, importantly, comprehensive reform of intercarrier compensation and high cost universal service. The Commission does not yet have its full complement of commissioners, following the change in administration. No one would benefit from the resulting uncertainty if the Commission were, for any combination of reasons, unable to complete separations reform by June 30, 2010. All of the reasons for granting a one-year freeze apply equally to the three-year period. If reform is completed earlier for all ILECs, or indeed if separations rules requirements are eliminated altogether for price cap carriers, then the additional insurance allowed by adopting the longer, three-year freeze will have cost nothing.

II. THE COMMISSION HAS ALREADY FOUND THE SEPARATIONS FREEZE IS WARRANTED FOR ALL ILECS.

A. The Commission and the Joint Board recognized a decade ago that the separations requirements are obsolete.

The Commission began a proceeding on comprehensive separations reform more than ten years ago. It recognized, in the 1997 NPRM, that “legislative, technological and market changes likely warranted comprehensive reform of the separations process, noting that the current network infrastructure is vastly different from the network and services used to define the cost categories appearing in the Commission’s current Part 36 rules.”⁴ In 1998, the Joint Board proposed freezing jurisdictional separations.⁵ In 2000, the Joint Board recommended that, until comprehensive reform could be undertaken and completed, the Commission freeze Part 36 category relationships and jurisdictional allocation factors for price cap ILECs and allocation factors for rate of return ILECs.⁶

B. In 2001, the Commission found the separations freeze appropriate and in the public interest.

In 2001, after soliciting and assessing public comment, the Commission adopted the Joint Board’s recommendation.⁷ The Commission imposed a freeze on the Part 36 category relationships and jurisdictional cost allocation factors, until such time as

⁴ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 at ¶¶ 9-19 (1997) (“1997 NPRM”); NPRM at ¶ 6.

⁵ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, State Members Report on Comprehensive Review of Separations (filed Dec. 21, 1998).

⁶ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. 2000) (“2000 Recommendation”).

⁷ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 at ¶ 9 (2001) (“2001 Order”).

comprehensive reform of the separations rules could be completed. The Commission concluded that freezing the factors “would provide stability and regulatory certainty for incumbent LECs by minimizing any impacts on separations results that might occur as a result of circumstances not contemplated by the Commission’s Part 36 rules.”⁸ This included, notably, “growth in local competition and new technologies.”⁹ The Commission also found that a freeze would reduce regulatory burdens on incumbent LECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.¹⁰ The Commission also recognized that competitive LECs and other ILEC competitors have no comparable requirements. Adopting a freeze would “further the Commission’s goal of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36.”¹¹

With Part 36 category relationships and allocation factors frozen for price cap carriers (allocation factors alone are frozen for rate of return carriers), the Commission ensured that ILECs were not required to conduct the tedious and expensive separations studies otherwise necessary to calculate separations results. The Commission set this freeze for five years, but even at the outset it suggested it might be extended well beyond that term, depending on “whether, and to what extent, comprehensive reform of separations has been undertaken by that time.”¹²

⁸ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 at ¶ 9 (2001) (“*2001 Order*”).

⁹ *Id.* at ¶ 12; NPRM at ¶ 8.

¹⁰ *2001 Order* at ¶ 12; NPRM at ¶ 8.

¹¹ *2001 Order* at ¶ 13; NPRM at n.20.

¹² *2001 Order* at ¶ 29; NPRM at ¶ 10.

C. In 2006, the Commission found it appropriate and in the public interest to extend the separations freeze.

In 2006, the Commission extended the freeze another three years.¹³ It found that more time was needed to study comprehensive reform, including assessing Joint Board and industry filings. Among the proposals before the Commission was elimination of the separations requirements for price cap carriers.

The Commission found that its 2001 analysis remained wholly applicable in 2006. It concluded that “the facts support maintaining the status quo,” and that “[a]llowing the separations process to revert to the pre-freeze rules would create undue instability and administrative burdens while the Commission is considering comprehensive separations reform”¹⁴ -- reform that could even include eliminating the requirement altogether for price cap carriers. The Commission also concluded it had ample authority to preserve the status quo to protect its ongoing reform effort goals would not be frustrated.¹⁵ Ultimately, the Commission found extending the jurisdictional separations freeze for an additional three years was a reasonable way to handle the jurisdictional apportionment of ILEC costs.

¹³ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 at ¶¶ 1, 16 (2006) (“2006 FNPRM”).

¹⁴ *Id.* at ¶¶ 19-23; NPRM at ¶¶ 16, 18.

¹⁵ *See MCI v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984) (“Substantial deference must be accorded to any agency when it acts to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated.”).

D. The same reasoning compels extending the freeze today.

The Commission's reasoning for the freeze in 2001 and 2006 remains equally compelling today, just as the NPRM suggests.¹⁶ A one-year interim extension is quite short -- possibly unreasonably short. A freeze, however, is in the public interest to maintain the regulatory status quo, while the pending rulemaking allows the Commission to coordinate with the Joint Board and complete separations reform.¹⁷

For price cap carriers, separations truly is obsolete, because their costs are now divorced from rates. However, to the extent anyone might be concerned about potential misallocation of costs between jurisdictions by rate of return carriers until reform is completed, then maintaining the stability and regulatory certainty of the existing freeze will let carriers make investment decisions without worrying that reverting to the old rules would create dramatic changes in cost recovery requirements. Failing to extend the freeze could lead some non-Bell ILECs to defer investment decisions. It also would create a sudden cost shift that would be especially problematic for rate of return carriers.

Extending the freeze also avoids needless and pointless regulatory costs, as the NPRM recognizes.¹⁸ Regulatory requirements are a genuine burden. Re-imposing the old separations rules would require substantial, incremental resources across several departments and all local operating companies, imposing annual regulatory costs in the millions. Failing to extend the freeze would impose all those costs and more -- all for a

¹⁶ NPRM at ¶¶ 17-18.

¹⁷ The Commission need not refer the proposed extension to the Joint Board. The freeze is temporary, and it is wholly consistent both with the Joint Board's earlier recommended decision and with the Commission's prior policy on separations.

¹⁸ NPRM at ¶ 17.

rule that the Commission has found no longer makes sense and has already considered eliminating.

The Commission cannot treat such regulatory costs lightly. Over the last decade, competition has intensified. While that means consumers have more choices -- choices of provider and of technology -- it also means ILECs have been losing lines. Embarq's access lines declined nearly 10% in 2008, following 6% declines in 2007 and 2006. In fact, Embarq has lost nearly one third of its access lines since the freeze was first adopted. Other ILECs have seen similar declines. Fewer lines and lower local revenues make such regulatory costs a greater burden than ever, made even worse by a serious economic recession. Meanwhile, ILECs' competitors are not subject to similar rules.

The separations compliance task has actually become more difficult today. After eight years with the freeze, the Commission understands that ILECs no longer have the procedures or personnel deployed for this purpose.¹⁹ The Commission can anticipate that many ILECs would be unable to meet the obligation on a timely basis if the Commission failed to extend the freeze at least the one year proposed in the NPRM. ILECs have not expected that these rules would be abruptly re-imposed, through inaction, without extending the freeze until reform is completed. This expectation can only have been reinforced by the Commission's forbearance orders removing the separations requirements altogether from the three largest ILECs.²⁰

¹⁹ NPRM at ¶ 17. *See also 2006 FNPRM* at ¶ 23 (acknowledging this same concern three years ago).

²⁰ NPRM at ¶ 2 n.4.

The Commission expressly found these requirements are unnecessary and warranted forbearance for the Bell Operating Companies (“BOCs”).²¹ The Commission and the Joint Board have recognized for a decade that the current separations rules are obsolete and need radical overhaul, because the world has changed. That change has only become more apparent and dramatic in the years since. Instead of a system of local monopolies, today’s telecommunications and information services industry consists of a wide range of competing service providers, competing networks, and competing technologies. In the meantime, having otherwise failed to complete separations reform, the Commission would be acting unreasonably if it did not extend the freeze at least one year. Nothing has happened that could possibly be cited to justify allow the freeze to come to an end.

The NPRM provides ample justification for continuing the freeze for a full three years, let alone the single year it proposes. The Commission should extend the current separations freeze for three years and prevent states from imposing any new or different cost allocation requirements.

²¹ See *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules*; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 at ¶ 12 (2008) (“*AT&T Forbearance Order*”) (granting AT&T forbearance from the separations requirements, among other rules), *pet. for recon. pending, pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008); *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*; *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket Nos. 07-204, 07-273, Memorandum Opinion and Order, FCC 08-271 at ¶ 27 (rel. Dec. 12, 2008) (extending forbearance from separations requirements to Verizon and Qwest), *pets. for recon. pending*.

III. THE SEPARATIONS RULES ARE OBSOLETE AND UNNECESSARY FOR PRICE CAP ILECS.

A. An extension of the separations freeze is an appropriate first step toward ultimate reform: the elimination of separations for price cap carriers.

The separations freeze was a reasonable first step in the reform process. It was a pragmatic approach to reform of jurisdictional separations that yielded a reasonable allocation of costs between state and federal jurisdictions. The freeze provided a simplified and stable regime, replacing what had been very cumbersome, complicated, and costly to administer. At a minimum, the Commission should extend the freeze and maintain the status quo while it takes action to complete reform. Embarq encourages the Commission to move promptly on separations reform, and believes the Commission can and should complete separations reform within one year. Nevertheless, a three-year extension would be a more sensible step than the single year proposed in the NPRM.²²

Separations reform, however, ultimately should be the elimination of the formal separations process for price cap carriers.

B. Separations rules are no longer appropriate or necessary for price cap ILECs.

The separations process was devised when all ILECs were regulated monopolies, operating strictly on a rate of return basis. In those days, there also was a clear distinction between intrastate and interstate services, while that distinction is becoming more difficult to draw today with the popularity of bundled services. The Commission, working cooperatively with the states, adopted its separations rules to ensure that these

²² Consistent with the 2006 *FNPRM*, the Commission should extend the freeze for three years or until separations reform has been completed.

monopoly carriers did not over-recover by applying the same costs to the state and federal jurisdictions.

The Commission intended the freeze to “reduce regulatory burdens on incumbent LECs” and promote competitive neutrality during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.”²³ The separations requirements are unnecessary in today’s regulatory and market environment. Most larger ILECs are wholly governed by price cap regulation at the federal level and increasingly at the state level. Embarq, for example, is entirely price cap regulated at the federal level. At the state level, it retains rate of return regulation in just two of the 18 states in which it provides service, and its rate of return operations account for less than 1% of its total access lines.

Under price caps, carriers’ rates are determined by means of a formula that, among other factors, accounts for changing levels of inflation and other non-accounting factors. With price cap regulation, carriers’ rates are completely unrelated to costs. Separated cost data is not used to set rates. As the Commission noted in the *AT&T Forbearance Order* and the *Verizon/Qwest Forbearance Order*, there is no longer any “direct link between regulated costs and prices.”²⁴ Accordingly, there is no need to continue to subject price cap ILECs to the separations rules.

The local services market has changed just as remarkably. Competition is a reality in the telecommunications industry. ILECs compete against cable television companies, competitive LECs, wireless carriers, and voice over Internet protocol service providers. Cable television companies compete directly with ILECs for

²³ NPRM at ¶ 8; *2001 Order* at ¶ 9.

²⁴ *AT&T Forbearance Order* at ¶ 11; *Verizon/Qwest Forbearance Order* at ¶ 27.

telecommunications services. The cable industry offers telephone services to almost 95% of households in America; it has replaced ILEC voice service to 19.8 million homes and businesses.²⁵ In the eight years since the separations freeze was adopted, cable voice subscribership has grown dramatically. Comcast alone claims to be the third largest provider of telephone service in the country, having surpassed even Qwest.²⁶ CLECs remain a well-established part of the telecommunications industry, holding a particularly large share of the more profitable business market. Wireless subscribership has exploded since the Commission first proposed reforming separations, growing from 55 to 271 million.²⁷ Wireless carriers now have many more lines in service than ILECs do; ILEC access lines have declined from 174 to 140 million over the same period.²⁸ The wireless industry has greater revenues than the ILEC industry, and wireless subscribership continues to grow. A growing percentage of customers have substituted wireless service for ILEC services. VoIP services also now have a significant impact on the telecommunications market. As broadband penetration has increased, so to have voice applications. Vonage alone, for example, has more than 2.6 million subscribers.²⁹ In contrast, ILEC subscribership and revenues have been declining.

²⁵ See <http://www.ncta.com/Statistics.aspx>.

²⁶ Press Release: “Comcast Now the Third Largest Residential Phone Services Provider in the U.S.” (Mar. 11, 2009), available at <http://www.cmcsk.com/>.

²⁷ See CTIA, Semi-annual Wireless Industry Survey Results at table 1, available at <http://www.ctia.org/advocacy/index.cfm/AID/10316>.

²⁸ Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (Aug. 2008) at Table 7.1.

²⁹ Press Release: “Vonage Holdings Corp. Reports Fourth Quarter and Full Year 2008 Results” (Feb. 26, 2009), available at <http://ir.vonage.com/>.

Plainly, the telecommunications market is now intensely competitive. Rates today are set and constrained by market forces, rather than regulation. They cannot increase rates without losing customers to one of several competitors. Price cap ILECs like Embarq are obliged to set their rates to meet vigorous competition; they cannot set them based on separated costs. The Commission has long recognized that “competition is the most effective means of ensuring that the charges, practices, classifications ... are just and reasonable, and are not unjustly or unreasonably discriminatory.”³⁰

Continued application of the separations process and rules to price cap LECs is more than unnecessary. It is contrary to the public interest, because it distorts competition. Together, the Part 36 separations process and the Part 32 regulatory accounting requirements impose significant regulatory and administrative costs on subject carriers. They place ILECs at a competitive disadvantage against cable TV, CLEC, wireless and VoIP competitors that are not subject to these requirements. In granting the BOCs forbearance from these requirements, the Commission found that these requirements are unnecessary and do not serve the public interest. It makes no sense to maintain these in place on just a subset of price cap ILECs.

The problem of such regulatory asymmetry will be even worse if the Commission fails to extend the separations freeze, and thereby compels non-BOC ILECs once again to develop and submit detailed, and expensive, separations and usage studies. Requiring ILECs alone to incur the costs of developing such studies would clearly undermine the Act’s stated goal “to promote competition and reduce regulation in order to secure lower

³⁰ E.g., *Petition of U.S. West Communications for Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, 14 FCC Rcd 16252 at ¶ 31 (1999).

prices and higher quality services for American telecommunications consumers.”³¹ It would also pointlessly consume resources that subject ILECs could invest in extending the reach and capability of their networks. Congress directed the Commission and state commissions to encourage deregulation -- notably including price cap regulation and regulatory forbearance -- to “remove [such] barriers to infrastructure investment” and so “encourage the deployment ... of advanced telecommunications capability to all Americans.”³²

In the current economic environment, and already facing loss of access lines and associated revenue to competitors, ILECs doubtless are already curtailing network investment. Every dollar spent on requirements of this type is a dollar not available to invest in network and in broadband. The Commission has recognized that it must consider the validity of continuing to impose regulatory requirements when the economic costs begin to exceed the public interest benefits.³³ The Commission should act to level the regulatory playing field by eliminating the separations requirement for all price cap carriers.

C. The Commission has already found separations are unnecessary for Bell companies, and the same reasoning applies to all price cap ILECs.

The Commission has already found the separations rules are unnecessary and unjustified for price cap carriers. The Commission granted Verizon and Qwest the same

³¹ Preamble, Telecom Act of 1996 Pub L No 104-104, 110 Stat 56 (1996).

³² 47 U.S.C. § 157 nt. (codifying section 706 of the 1996 Act).

³³ *E.g., Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 at ¶¶ 175-78 (1994) (forbearing from tariffing and other requirements for mobile wireless services in light of developing competition).

conditional forbearance previously granted to AT&T from these and other requirements.³⁴ Its order, however, did not address the same requests for relief submitted by other, smaller price cap carriers. Extending the freeze as outlined in the NPRM is a minimum step. The Commission, however, should act to extend forbearance from these requirements to all price cap carriers. The matter remains pending on reconsideration and is ripe for decision.³⁵

In September 2008, the Commission rightly found that section 10³⁶ criteria are met for forbearance from section 220(a)(2) of the Act³⁷ and the Commission's cost assignment rules applicable to the local operating companies of Verizon and Qwest. Those rules include section 32.23 (non-regulated activities), section 32.27 (transactions with affiliates), Part 64, Subpart I (cost allocation), Part 36 (jurisdictional separations procedures), Part 69, Subparts D and E (cost apportionment) and other related rules that derive from or are dependent upon them.³⁸

The Commission had previously granted conditional, limited forbearance from those rules to AT&T. Now, appropriately, the Commission acted "on its own motion" to

³⁴ *Verizon/Qwest Forbearance Order* at ¶ 27; *AT&T Forbearance Order* at ¶ 11.

³⁵ See *Petition for Reconsideration of Embarq, Frontier, and Windstream*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21 (filed Oct. 6, 2008). Only one filing was submitted opposing the reconsideration petition of Embarq, Frontier, and Windstream. *Comments of Sprint Nextel, et al.* (filed Oct. 21, 2008). Qwest filed in support of the price cap ILECs' reconsideration petition. *Qwest Reply* (filed Oct. 29, 2008).

³⁶ 47 U.S.C. § 160(b).

³⁷ 47 U.S.C. § 220(a)(2).

³⁸ The forbearance grant was conditioned on Wireline Competition Bureau review and approval (subsequently granted individually to each BOC) of a compliance plan showing how the carriers will continue to meet statutory and regulatory obligations.

“extend to Verizon and Qwest the conditional forbearance granted to AT&T.”³⁹ By letter, Verizon and Qwest asked the Commission to provide them the same forbearance.⁴⁰ The Commission issued a public notice, subsequently published in the *Federal Register*, which invited comment on Verizon’s and Qwest’s request.⁴¹

Embarq, Frontier, and Windstream submitted the same request into the record, asking the Commission to extend the same conditional forbearance to all price cap ILECs subject to those rules.⁴² In comments supporting extending forbearance to Verizon and Qwest, as well, Embarq and frontier pointed out that the Commission had an obligation under section 10(a), even in the absence of any individual forbearance petitions to extend that relief to themselves and the rest of the class of similarly situated ILECs.⁴³ Embarq, Frontier, and Windstream made these same points in ex parte meetings and filings.⁴⁴

³⁹ Order at ¶¶ 1, 23.

⁴⁰ Letter from Ann Berkowitz (Verizon) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008) (“*Verizon/Qwest Letter*”).

⁴¹ Public Notice, DA 08-1361 (rel. June 6, 2008); Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, 73 *Fed. Reg.* 33,430 (June 12, 2008); Public Notice, DA 08-1402 (rel. June 12, 2008).

⁴² Letter from Jennie Chandra (for Embarq, Frontier, and Windstream) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 05-342 (July 9, 2008) (“*Embarq/Frontier/Windstream Letter*”). The Commission has not yet issued a public notice for their request. This petition for reconsideration, however, ensures such notice to the public, so a separate further notice is unwarranted.

⁴³ See, e.g., Comments of Embarq, WC Docket No. 07-21 (June 26, 2008); Reply Comments of Embarq, WC Docket Nos. 07-21, 05-342 (Sept. 3, 2008); Reply Comments of Frontier Communications, WC Docket Nos. 07-21, 05-342 (Sept. 3, 2008).

⁴⁴ See *Embarq/Frontier/Windstream Letter* at 1; Letter from Ann Berkowitz (on behalf of many carriers) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 05-342, 07-139, 07-204, 07-273, 07-204 (Aug. 6, 2008). See also Letter from Jennie Chandra (for Embarq, Frontier, and Windstream) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 05-342, 07-139, 07-204, 07-273, 07-204 (Sept. 8, 2008).

Qwest and Verizon also filed ex parte letters reiterating that cost assignment relief should be extended to all similarly situated carriers.⁴⁵

In granting the BOCs conditional relief from cost assignment rules -- including the separations requirements -- the Commission found that enforcement of separations rules is unnecessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. It found enforcement of these rules is not necessary for the protection of consumers. It found that forbearance was in the public interest. It found there “that there is no current, federal need for the Cost Assignment Rules,” because the BOCs are subject to price cap regulation, which has eliminated any “direct link between regulated costs and prices.”⁴⁶

The Commission offered no explanation why it neglected to extend that same forbearance to other price cap ILECs, even to other price cap ILECs that had made the same forbearance request. Embarq encourages the Commission to correct that oversight on reconsideration, and thereby eliminate the separations requirements for price all cap carriers. Even with the freeze extended, it will make no sense that smaller price cap

⁴⁵ Letter from Lynn Starr (Qwest) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 05-342, 07-139, 07-204, 07-273, 07-204 (filed Sept. 2, 2008) (seeking forbearance for all similarly situated carriers); Letter from Ann Berkowitz (Verizon) to Marlene Dortch (FCC), WC Docket Nos. 07-21, 05-342, 07-139, 07-204, 07-273, 07-204 (filed Aug. 20, 2008) (same).

⁴⁶ *AT&T Forbearance Order* at ¶ 11; *Verizon/Qwest Forbearance Order* at ¶ 27. The Commission also found that it did not matter that some Verizon and Qwest operating companies receive high cost support, or that some of their local companies may still be regulated under rate of return at the state level. It recognized that, for “price cap carriers generally not subject to interstate rate-of-return regulation,” forbearance from cost assignment rules -- including the separations requirements -- was appropriate.

carriers remain subject to separations requirements that the Commission has found are unnecessary and unjustified for BOCs, precisely because they are price cap regulated.⁴⁷

CONCLUSION

Embarq supports the NPRM's tentative conclusion that the separations freeze should be extended. Although the NPRM proposes a one-year extension, Embarq believes a three-year extension would be better for the Commission and the public interest. In either case, during the time allowed by the freeze, the Commission should take action to complete reform of the separations process. In that interim, the Commission should act to eliminate separations requirements for all federally price cap regulated carriers once and for all.

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⁴⁷ The separations rules are, if anything, even more obsolete for mid-size, independent price cap ILECs like Embarq. They are a small fraction of the size of AT&T or Verizon. They are not integrated carriers and do not have significant facilities-based wireless or long distance affiliates. They serve chiefly rural areas. The costs and burdens of regulatory rules only weigh more heavily on them.